

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES P. KALIL,	§
	§ No. 204, 2020
Respondent Below,	§
Appellant,	§ Court Below—Court of Chancery
	§ of the State of Delaware
v.	§
	§
DONALD KALIL,	§ C.A. No. 11047
	§
Petitioner Below, Appellee.	§

Submitted: December 4, 2020

Decided: January 22, 2021

Before **SEITZ**, Chief Justice; **VALIHURA** and **TRAYNOR**, Justices.

**ORDER**

After consideration of the parties’ briefs and the record on appeal, it appears to the Court that:

(1) The appellee, Donald Kalil (the “Trustee”) is the trustee of a trust created by the parties’ father (the “Settlor”) in 1997, as amended (the “1997 Trust”), and is the executor of the Settlor’s estate. The Trustee is also a trustee of another trust created by the Settlor in 1989, as amended (the “1989 Trust”). The Trustee and the Appellant, James P. Kalil (the “Appellant”), are beneficiaries of the trusts, as are other members of their family.

(2) The Settlor died testate on November 8, 2014. On May 20, 2015, the Trustee, as executor of the Settlor’s estate and as trustee of the 1997 Trust, filed a

petition seeking to reform the 1997 Trust and other relief. The Appellant opposed the petition and asserted certain claims against the 1989 Trust and the 1997 Trust, including a claim that he was entitled to a larger share of the 1989 Trust than was reflected in the trust documents and their amendments (the “Reallocation Claim”). The Appellant’s Reallocation Claim was that a 1993 amendment to the 1989 Trust reduced his and the Trustee’s portions of the 1989 Trust because they owned part of the family business; because the Appellant later relinquished his ownership in the business, he asserted that he was entitled to a larger portion of the 1989 Trust.

(3) On June 11, 2018, the Court of Chancery entered an order that adopted a Master’s report, dated February 7, 2018 the (the “Master’s Report”), which resolved many of the parties’ claims.<sup>1</sup> One result of the Court of Chancery’s decision was that the Settlor’s largest asset would be distributed according to the 1989 Trust, which is more favorable to the Appellant than the 1997 Trust is. The Court of Chancery also determined that the Appellant had not properly pleaded the Reallocation Claim and that, even if he had, the claim would be time-barred. The Trustee appealed to this Court. The Appellant filed a notice of cross-appeal, but this Court dismissed the cross-appeal as untimely. On January 14, 2020, this Court affirmed the Court of Chancery’s decision.<sup>2</sup>

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<sup>1</sup> *In re Estate and Trust of Kalil*, 2018 WL 793718 (Del. Ch. Feb. 7, 2018), *exceptions overruled and report adopted by* 2018 WL 11028294 (Del. Ch. June 11, 2018).

<sup>2</sup> *Kalil v. Kalil*, 2020 WL 233848 (Del. Jan. 14, 2020).

(4) On April 20, 2020, the Appellant filed a motion in the Court of Chancery in which he again asserted the Reallocation Claim. On May 26, 2020, the Court of Chancery denied the motion. The Appellant has appealed to this Court.

(5) We find no basis for reversing the Court of Chancery's order. The Master's Report determined that the Appellant did not properly plead the Reallocation Claim and that, even if he had, the claim would be time-barred. The Court of Chancery adopted the Master's conclusions, and the appellant did not timely appeal from that decision. The Court of Chancery did not err by declining to allow relitigation of the issue.<sup>3</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.  
Chief Justice

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<sup>3</sup> See generally *Sullivan v. Mayor of Elsmere*, 23 A.3d 128, 134 (Del. 2011) (stating that a trial court ruling may become the law of the case if not properly challenged on appeal).